

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton; and
Robert G. Taub

Clarksville Post Office
Clarksville, New York

Docket No. A2011-81

Order Remanding Determination

(Issued January 19, 2012)

I. INTRODUCTION

On December 15, 2011, the Postal Service advised the Commission that it “will delay the closing or consolidation of any Post Office until May 15, 2012.”¹ The Postal Service further indicated that it “will proceed with the discontinuance process for any Post Office in which a Final Determination was already posted as of December 12, 2011, including all pending appeals.” *Id.* It stated that the only “Post Offices” subject to closing prior to May 16, 2012 are those that were not in operation on, and for which a Final Determination was posted as of, December 12, 2011. *Id.* It affirmed that it “will not close or consolidate any other Post Office prior to May 16, 2012.” *Id.* at 2. Lastly,

¹ United States Postal Service Notice of Status of the Moratorium on Post Office Discontinuance Actions, December 15, 2011, at 1 (Notice).

the Postal Service requested the Commission “to continue adjudicating appeals as provided in the 120-day decisional schedule for each proceeding.” *Id.*

The Postal Service’s Notice outlines the parameters of its newly announced discontinuance policy. Pursuant to the Postal Service’s request, the Commission will fulfill its appellate responsibilities under 39 U.S.C. § 404(d)(5).

On September 21, 2011, Peter Henner, on behalf of himself and all other Petitioners (Petitioners), filed a petition with the Commission seeking review of the Postal Service’s Final Determination to close the Clarksville, New York post office (Clarksville post office).² The Petition also included a Motion to suspend the closing of the Clarksville post office until disposition of the appeal. After reviewing the record in this proceeding, the Commission remands the Final Determination to close the Clarksville post office for further consideration.

II. PROCEDURAL HISTORY

On September 23, 2011, the Commission established Docket No. A2011-81 to consider the appeal, designated a Public Representative, and directed the Postal Service to file its Administrative Record and any responsive pleadings.³ On October 6,

² Petition to review determination to close the Clarksville Post Office, September 21, 2012 (Petition). In addition to the Law Offices of Peter Henner, Petitioners are the Town of New Scotland; Clarksville Historical Society; Onesquethaw Union Cemetary Association, Inc.; Joseph T. Hogan Appliance and Electric Service; Dan Smith, as proprietor of Jake Moon Restaurant; Marilyn Miles, as Membership Chair of the Eastern Competitive Trail Ride Association; June Alberts; Patricia Augle; Dawn Baldwin; Joan Bangert; Wander and Phyllis Braga; Mary Collins; Carol Cootware; Nevada Danckert; Pamela Fox-Ferro and Francis Ferro; Judy Grose-Johnson; Barbara and Victor Hansen; Jean Hoagland; Marie and William Hornick; Jeannette Kefalant; Anthony and Carol Latham; Edwina Leveroni; Donna Martin; Joan Plunkett; George E. Petruska Jr.; Grace and George Petruska; Roger Smith; Geoffrey Stein; Blanche and Richard Stickley; and Minnie Turner.

³ Order No. 870, Notice and Order Accepting Appeal and Establishing Procedural Schedule, September 23, 2011.

2011, the Postal Service filed the Administrative Record with the Commission.⁴ On October 18, 2011, the Albany County Sheriff's Office (Sheriff's Office) filed a Notice of Intervention.⁵ On October 25, 2011, Petitioners filed a Brief in support of their Petition.⁶

On November 15, 2011, the Postal Service filed comments requesting that the Commission affirm its Final Determination to close the Clarksville post office.⁷

On November 29, 2011, Petitioners filed a reply brief responding to the Postal Service Comments.⁸ On December 1, 2011, the Public Representative filed reply comments.⁹

III. BACKGROUND

The Clarksville post office provides retail postal services and service to 214 post office box or general delivery customers. Final Determination at 2, 8. No delivery customers are served through this office. *Id.* The Clarksville post office, an EAS-13 level facility, has retail access hours of 7:30 a.m. to 11:30 a.m. and 1:00 p.m. to 4:45 p.m. Monday through Friday, and 9:00 a.m. to 11:00 a.m. on Saturday. *Id.* at 2. Lobby access hours are 7:30 a.m. to 5:00 p.m. Monday through Friday, and 8:00 a.m. to 11:30 a.m. on Saturday. *Id.*

The postmaster position became vacant on March 31, 2010 when the Clarksville postmaster retired. *Id.* An officer-in-charge (OIC) was installed to operate the office.

⁴ The Administrative Record is attached to the United States Postal Service Notice of Filing, October 6, 2011 (Administrative Record). The Administrative Record includes, as Item No. 47, the Final Determination to Close the Clarksville, New York Post Office and provide delivery and retail services by rural route service under the administrative responsibility of the Feura Bush Post Office (Final Determination).

⁵ Notice of Intervention of the Albany County Sheriff's Office, October 18, 2011 (Notice of Intervention).

⁶ Petitioners' Brief, October 25, 2011 (Petitioners' Brief).

⁷ United States Postal Service Comments Regarding Appeal, November 15, 2011 (Postal Service Comments).

⁸ Petitioners' Reply Brief, November 29, 2011.

⁹ Public Representative's Reply Comments, December 1, 2011 (PR Reply Comments).

Id. Retail transactions average 31 transactions daily (32 minutes of retail workload). *Id.* Office receipts for the last 3 years were \$80,569 in FY 2008; \$74,195 in FY 2009; and \$65,391 in FY 2010. *Id.* There is one permit or postage meter customer. *Id.* By closing this office, the Postal Service anticipates savings of \$26,521 annually. *Id.* at 7.

After the closure, retail services will be provided by the Feura Bush post office located approximately 5 miles away.¹⁰ Delivery service will be provided by rural carrier through the Feura Bush post office. *Id.* The Feura Bush post office is an EAS-15 level office, with retail hours of 8:30 a.m. to 11:30 a.m. and 1:00 p.m. to 4:45 p.m. Monday through Friday, and 9:00 a.m. to 11:00 a.m. on Saturday. *Id.* There are 137 post office boxes available. *Id.* The Postal Service will continue to use the Clarksville name and ZIP Code. *Id.* at 6, Concern No. 1.

IV. PARTICIPANT PLEADINGS

Petitioner. Petitioners oppose the closure of the Clarksville post office. Petitioners argue that the Postal Service has failed to consider the effect of the closing on the Clarksville community and that rural carrier service will not provide regular and effective service. Petition at 2-3. Petitioners state that the Postal Service did not consider the extensive business and civic community in Clarksville. *Id.* at 8-9. They argue that rural route service is not a viable option for many of these groups, due to requirements for bulk mailings, mail requiring a signature, and security. *Id.* at 10-11.

Furthermore, the Petitioners note that the Postal Service did not list in the Administrative Record all of the Clarksville businesses, civic organizations, and nonprofit associations, making it appear the Postal Service did not fully consider that the Clarksville community is far more economically and socially active than the Postal Service recognized. *Id.* at 16. On behalf of individuals, Petitioners state that rural mailboxes are not appropriate for perishable packages, such as those containing

¹⁰ *Id.* at 2. MapQuest estimates the driving distance between the Clarksville, New York and Feura Bush, New York post offices to be approximately 5.6 miles (8 minutes driving time).

medications. *Id.* at 10. Petitioners argue that the Postal Service did an inaccurate analysis of the returned questionnaires and responded with form letters to individuals who had concerns. *Id.* at 12-13. They argue that the Postal Service also understated the workload at Clarksville, by choosing non-representative weeks for its survey, conducted March 5-20, 2011. *Id.* at 14-15.

Petitioners further argue that the savings analysis is flawed in several ways: (1) by failing to use the OIC salary (instead using a full Postmaster salary and benefits); (2) ignoring revenue generated by post office box rentals; and (3) underestimating the costs of replacement services, such as miles driven by the rural carriers. *Id.* at 14-16; Petitioners' Brief at 16-17. Finally, Petitioners argue that the Postal Service violated 39 U.S.C. § 101(b) which prohibits closing a small post office solely for operating at a deficit. Petition at 16-17.

Intervenor. The Sheriff's Office filed a Notice of Intervention, opposing the closure of the Clarksville post office. The Sheriff's Office indicates that it plans to relocate its patrol station to Clarksville at a closed elementary school located one-quarter mile from the Clarksville post office. Notice of Intervention at 2. The Sheriff's Office will employ approximately 70 full-time and 70 part-time employees, including, for example, Supervisors, Investigators, Command Staff, and Medical Technicians. *Id.* at 1. It contends that it will require a functioning post office for sending and receiving certified letters, packages, and mailing bulky materials. *Id.* at 1-2. Further, it indicates that the closing of the Clarksville post office may affect its relocation plans. *Id.* at 2.

Postal Service. The Postal Service argues that the Commission should affirm its determination to close the Clarksville post office. Postal Service Comments at 2. The Postal Service believes the appeal raises three main issues: (1) the effect on postal services, (2) the impact on the Clarksville community, and (3) the economic savings expected to result from discontinuing the Clarksville post office. *Id.* at 1. The Postal Service asserts that it has given these and other statutory issues serious consideration

and concludes that the determination to discontinue the Clarksville post office should be affirmed. *Id.* at 18.

The Postal Service explains that its decision to close the Clarksville post office was based on several factors, including:

- the postmaster vacancy;
- a minimal workload and declining office revenue;
- a variety of other delivery and retail options (including the convenience of rural delivery and retail service);
- very little projected growth in the area;
- minimal impact on the community; and
- expected financial savings.

Id. at 5. The Postal Service contends that it will continue to provide regular and effective postal services to the Clarksville community when the Final Determination is implemented. *Id.*

The Postal Service also asserts that it has followed all statutorily required procedures and has addressed the concerns raised by Petitioners regarding the effect on postal services, effect on the Clarksville community, economic savings, and effect on postal employees. *Id.* at 18.

The Postal Service addresses the concerns that were raised by Petitioners regarding service to the business community. It states that the business and civic community can be served by rural route service with respect to accountable mail, such as certified, registered, Express, signature confirmation or COD. *Id.* Regarding individual concerns, such as perishable medication, the Postal Service notes that special provisions can be made for hardship delivery. *Id.* at 10. Postal Service customers who are concerned about security may put locks on their rural mailboxes; it also notes that there have been no reports of theft or vandalism of postal boxes in the area. *Id.* at 7.

The Postal Service argues that rural carrier service would cost the Postal Service substantially less than maintaining the Clarksville post office, and that any new delivery points can be included in existing lines of rural carrier travel. *Id.* at 14. The Postal Service also states that revenue from post office box rental is a minor proportion of an office's total revenue, so does not factor into savings calculations. *Id.* at 15. Finally, the Postal Service asserts that it is not closing the Clarksville post office solely for operating at a deficit, and that a variety of factors informed the decision to close. *Id.* at 16.

Public Representative. The Public Representative opposes the closure of the Clarksville post office. PR Reply Comments at 4. The Public Representative argues that Petitioners' comprehensive filings make a convincing case for expanding the concept of "impact on the community," increasing the transparency of key financial assumptions affecting a post office's fate (such as the cost of replacement service and revenue calculations), exploring whether the two week surveys that the Postal Service relies upon are a reliable basis for making decisions, and requiring more accountability from the Postal Service for the accuracy of the record and response to customer concerns. *Id.*

Specifically, the Public Representative argues that the Postal Service's conventional approach to the impact on the community is overly narrow and this narrowness diminishes patrons' due process rights. *Id.* at 7-8. The Public Representative is concerned about the Postal Service's erroneous estimate of the number of businesses and organizations and anticipated growth in the community. *Id.* at 9-10. The Public Representative also argues that the Postal Service did not provide appropriate responses to customers' concerns about why Feura Bush was selected as a replacement post office, noting that almost all the questionnaire responses indicated that Feura Bush was "out of the way." *Id.* at 13-14. Finally, the Public Representative states that the Postal Service did not properly calculate the revenue issuing from the Clarksville post office by failing to credit revenue to the post office when business customers ordered from postage vendors online. *Id.* at 16.

V. COMMISSION ANALYSIS

The Commission's authority to review post office closings is provided by 39 U.S.C. § 404(d)(5). That section requires the Commission to review the Postal Service's determination to close or consolidate a post office on the basis of the record that was before the Postal Service. The Commission is empowered by section 404(d)(5) to set aside any determination, findings, and conclusions that it finds to be (a) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; (b) without observance of procedure required by law; or (c) unsupported by substantial evidence in the record. Should the Commission set aside any such determination, findings, or conclusions, it may remand the entire matter to the Postal Service for further consideration. Section 404(d)(5) does not, however, authorize the Commission to modify the Postal Service's determination by substituting its judgment for that of the Postal Service.

A. Notice to Customers

Section 404(d)(1) requires that, prior to making a determination to close any post office, the Postal Service must provide notice of its intent to close. Notice must be given 60 days before the proposed closure date to ensure that patrons have an opportunity to present their views regarding the closing. The Postal Service may not take any action to close a post office until 60 days after its determination is made available to persons served by that post office. 39 U.S.C. § 404(d)(4). A decision to close a post office may be appealed within 30 days after the determination is made available to persons served by the post office. *Id.* § 404(d)(5).

The record indicates the Postal Service took the following steps in reaching its Final Determination. On April 22, 2011, the Postal Service distributed questionnaires to customers regarding the possible change in service at the Clarksville post office. Final Determination at 2. A total of 214 questionnaires were distributed to delivery customers. *Id.* Other questionnaires were made available at the retail counter. *Id.* A total of 97 questionnaires were returned. *Id.* On May 2, 2011, the Postal Service held a

community meeting at the Clarksville Community Church (Reformed) to address customer concerns. *Id.* Sixty-three customers attended. *Id.*

The Postal Service posted the proposal to close the Clarksville post office with an invitation for comments at the Clarksville and Feura Bush post offices from May 17, 2011 through July 18, 2011. *Id.* at 2. The Final Determination was posted at the same two post offices from August 23, 2011 through September 24, 2011. Administrative Record, Item No. 49.

The Postal Service has satisfied the notice requirements of 39 U.S.C. § 404(d).

B. Other Statutory Considerations

In making a determination on whether or not to close a post office, the Postal Service must consider the following factors: the effect on the community; the effect on postal employees; whether a maximum degree of effective and regular postal service will be provided; and the economic savings to the Postal Service. 39 U.S.C. § 404(d)(2)(A).

The Postal Service must also comply with the provisions of 39 U.S.C. § 101(b), which prohibits closing any small post office solely for operating at a deficit.

Effect on the community. Clarksville, New York is an unincorporated community located in Albany County, New York. Final Determination at 6. The community is administered politically by the Town of New Scotland. *Id.* Police protection is provided by the Albany County Sheriff. *Id.* Fire protection is provided by the Onnesquethaw Fire Company. *Id.* The community is comprised of retirees, the self-employed, and those who work in local businesses or commute to work in nearby communities. *Id.* Residents may travel to nearby communities for other supplies and services. See *generally* Administrative Record, Item No. 22 (returned customer questionnaires and Postal Service response letters).

As a general matter, the Postal Service solicits input from the community by distributing questionnaires to customers and holding a community meeting. The Postal Service met with members of the Clarksville community and solicited input from the

community with questionnaires. In response to the Postal Service's proposal to close the Clarksville post office, customers raised concerns regarding the effect of the closure on the community. Their concerns and the Postal Service's responses are summarized in the Final Determination. Final Determination at 6-7.

Petitioners also assert that the Postal Service gave *pro forma* responses to the questionnaires, and thus did not address the concerns of postal customers. Petition at 13. The Postal Service responds that 97 questionnaires were returned and a number of supplemental letters were received. All concerns were addressed and standard concerns received a standard response. Postal Service Comments at 4 n.7.

Petitioners assert the Postal Service did not adequately consider the size of the business and civic community in Clarksville. Petitioners' Brief at 5. The Public Representative points out that the Postal Service's identification of two churches and six businesses in Clarksville is materially incorrect. PR Reply Comments at 9. The Public Representative's comments include a table listing a number of businesses (14) overlooked by the Postal Service during its analysis. *Id.* at 11, Table 1. That list is not exhaustive. *Id.* at 12. The Postal Service responds that it identified businesses that maintained post office boxes at the Clarksville post office. Postal Service Comments at 8 n.13.

The claims about the size and potential growth of the Clarksville community are contested on the record. Petitioners and the Public Representative present a number of arguments and cites to facts, which, if true, call into question whether the Postal Service adequately assessed the size and potential growth of the Clarksville community. See, e.g., Petitioners' Brief at 8-9; PR Reply Comments at 9-13. In addition, the Sheriff's Office indicates that it plans to relocate its operations to Clarksville. The Sheriff's Office expects this new location would employ approximately 70 full-time and 70 part-time employees. According to the Sheriff's Office, the closing of the Clarksville post office would have an adverse impact on the Sheriff's Office, and might affect its plans to locate its substation. Notice of Intervention at 1-2. Although the Postal Service notes

the Sheriff's Office intervention, it does not substantively address the relocation plans or their implication.

Petitioners' and the Public Representative's identification of numerous businesses (and other organizations) unmentioned in the Administrative Record raises substantial doubt about the thoroughness of the Postal Service's analysis of the community. The record is not sufficiently developed regarding these issues raised below.

On the basis of the record before it, the Commission cannot conclude that the Postal Service has adequately considered the effect of the post office closing on the community as required by 39 U.S.C. § 404(d)(2)(A)(i).

Effect on employees. The Postal Service states that the Clarksville postmaster retired on March 31, 2010 and that an OIC has operated the Clarksville post office since then. Final Determination at 7. It asserts that after the Final Determination is implemented, the temporary OIC will either be reassigned or separated and that no other Postal Service employee will be adversely affected. *Id.*

The Postal Service has considered the possible effects of the post office closing on the OIC and has satisfied its obligation to consider the effect of the closing on employees at the Clarksville post office as required by 39 U.S.C. § 404(d)(2)(A)(ii).

Effective and regular service. The Postal Service contends that it has considered the effect the closing will have on postal services provided to Clarksville customers. Postal Service Comments at 5. It asserts that customers of the closed Clarksville post office may obtain retail services at the Feura Bush post office located 5 miles away.¹¹ Final Determination at 2. Delivery service will be provided by rural carrier through the Feura Bush post office. *Id.* The Clarksville post office box customers may obtain Post Office Box Service at the Feura Bush post office, which has 137 boxes available. *Id.*

For customers choosing not to travel to the Feura Bush post office, the Postal Service explains that retail services will be available from the carrier. *Id.* at 4. The

¹¹ *Id.* at 2. MapQuest estimates the driving distance between the Clarksville, New York and Feura Bush, New York post offices to be approximately 5.6 miles (8 minutes driving time).

Postal Service adds that it is not necessary to meet the carrier for service since most transactions do not require meeting the carrier at the mailbox. *Id.*

Petitioners raise the issue of the business and civic community's need for bulk mailings and timely signatures on documents. Petition at 10. The Postal Service does not specifically address the issue of business mailings; however, it reiterates that most special services, which would encompass many business needs, can be provided by rural carrier. Postal Service Comments at 6.

Regarding the alternate services available to Clarksville customers, the record is unclear in a significant respect. The Clarksville post office provides service to 214 post office box or general delivery customers. Final Determination at 2. However, only 137 post office boxes are available at the Feura Bush post office. *Id.* The potential shortfall in number of postal office boxes is not addressed in the record. Nor is there any indication that the Postal Service intends to install cluster box units (CBU's) to address customers' needs. While the Postal Service does assume that 178 customers will receive rural delivery service, that figure was challenged by Petitioners and, in rebuttal, not adequately justified by the Postal Service.

Upon review of the record, the Commission cannot conclude that the Postal Service adequately considered the issues raised by customers concerning effective and regular service as required by 39 U.S.C. § 404(d)(2)(A)(iii).

Economic savings. The Postal Service estimates total annual savings of \$26,521. Final Determination at 7. It derives this figure by summing the following costs: postmaster salary and benefits (\$48,569) and annual lease costs (\$10,382) minus the cost of replacement service (\$32,430). *Id.*

The Commission has previously observed that the Postal Service should include in its estimate of savings those costs likely to be eliminated by the closing. The Clarksville post office postmaster retired on March 31, 2010. Final Determination at 2. The post office has since been staffed by a non-career OIC who, upon discontinuance of the Clarksville post office, will either return to duties at another post office or may be separated from the Postal Service. The postmaster position and the corresponding

salary will be eliminated. See, e.g., Docket No. A2011-67 United States Postal Service Comments Regarding Appeal, October 24, 2011, at 13; and Docket No. A2011-68, United States Postal Service Comments Regarding Appeal, November 2, 2011, at 10.

Based on a review of the record, the Commission concludes that the Postal Service has reviewed the economic savings required by 39 U.S.C. § 404(d)(2)(A)(iv).

Section 101(b). Section 101(b) prohibits closing any small post office solely for operating at a deficit. Petitioners allege that the Postal Service is closing the Clarksville post office solely for economic reasons. Petition at 2, 16-17.

Having examined the record, however, the Commission is not prepared to conclude that the Postal Service's determination violates section 101(b). In addition to considering workload at the Clarksville post office (revenues declining and averaging only 31 retail transactions per day), the Postal Service took into account other factors such as the postmaster vacancy, the impact on the community, and expected financial savings. In addition, it considered the alternate delivery and retail options available to customers. Final Determination at 7-8.

VI. CONCLUSION

Based on its review of the record before it and for the reasons discussed above, the Commission concludes that the Postal Service has not adequately considered the requirements of 39 U.S.C. § 404(d). Accordingly, the Postal Service's determination to close the Clarksville post office and provide service by rural route delivery is remanded for further consideration.

It is ordered:

The Postal Service's determination to close the Clarksville, New York post office is remanded for further consideration.

By the Commission.

Shoshana M. Grove
Secretary

Commissioner Acton dissenting.